COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President, and at the request of the County Executive

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AN ACT to:
(1)   establish a fourth impact tax district encompassing certain areas of the County;
(2)   phase in the application of the impact tax in certain areas of the County;
(3)   **[[repeal]]** <u>amend</u> the requirement that the County Executive submit a biennial report on the impact tax **[[rates]]**;
(4)   **[[provide for certain additional credits against the impact tax]]** <u>expand the definition of impact highways to include certain transportation facilities, and revise the restrictions on spending funds derived from the impact tax</u>;
(5)   provide for certain exemptions from the tax:
(6)   make clarifying and stylistic changes; and
(7)   generally amend the law governing the Development Impact Tax.

By amending
    Montgomery County Code
    Chapter 52, Taxation
    Article VII, Development Impact Tax for Major Highways

Boldface	*Heading or defined term.*
<u>Underlining</u>	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
<u>Double underlining</u>	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

1   **Sec. 1. Chapter 52, Article VIII, is amended as follows:**

2   **ARTICLE VII. DEVELOPMENT IMPACT TAX [FOR MAJOR**

3   **HIGHWAYS].**

4   **52-47.   Definitions.**

5   In this Article the following terms have the following meanings:

6   [[(a)]] *   *   *

7   [[(b)]] *Adequate Public Facilities Ordinance staging ceiling standards* means

8   standards by which the area-wide adequacy of **[[major highways and]]**

9   transportation facilities serving a proposed development are judged.

10   APFO staging ceiling standards do not include requirements for other

11   on-site or off-site transportation improvements that may be separately

12   required[, nor do they include] or standards relating to local area

13   review[,] which may be independently required.

14   [[(c)]] *Annual growth policy* means [current] the annual growth policy most

15   recently adopted under Chapter 33A to provide guidelines for the

16   administration of the Adequate Public Facilities Ordinance.

17   [[(d)]] *   *   *

18   *Bioscience facility* means any biological research and development or

19   manufacturing facility that substantially involves research, development

20   or manufacturing of:

21   (1)   biologically active molecules,

22   (2)   devices that employ or affect biological processes,

23   (3)   devices and software for production or management of specific

24   biological information, or

25   (4)   products or materials that purify or handle biologically active

26   products;

27   [[(e)]] *   *   *

28   [[(f)]] *   *   *

29   [[(g)]] *   *   *

30   [[(h)]] *Development impact tax* means a pro rata per unit or per square foot of

31   gross floor area tax imposed before a building permit is issued for

32   development [[in an impact tax district]] which is intended to defray a

33   portion of the costs associated with impact [highway] transportation

34   improvements [[in the tax districts]] that are necessary to accommodate

35   the traffic generated by the development.

36   [[(i)]] *   *   *

37   [[(j)]] *   *   *

38   [[(k)]] *   *   *

39   *Hospital* means an institution licensed as a hospital under state law.

40   [[(l)]] *Impact tax district* means a planning policy area or combination of

41   planning policy areas described under Section 52-49(c).

42   [[(m)]] *Impact tax district transportation program* means the transportation

43   improvement program described under Section 52-58.

44   [[(n)]] *Improvement* means a highway, intersection improvement, transit

45   center, [and] bus, bus shelter, hiker-biker trail, sidewalk connection, or

46   park and ride [projects] lot, including planning, engineering, design

47   services, right-of-way acquisition, grading, paving, curbs, gutters,

48   drainage, sidewalks, signalization, signage, and all other construction

49   and associated costs.

50   [[(o)]] *Master plan of highways* means the "Master Plan of Highways"

51   [prepared by the Maryland-National Capital Park and Planning

52   Commission,] adopted by the [Montgomery County] Planning Board

53   and approved by the District Council, and any similar plan adopted by

54   either Gaithersburg or Rockville.

55   [[(p)]] *Impact [highways] transportation improvement* means [the arterial

56   highway segments, transit centers, and park-and-ride facilities under] <u>an</u>

57   <u>improvement listed in</u> Section 52-58.

58   [[(q) *Maryland-National Capital Park and Planning Commission* means the

59   agency established under Article 28 of the Maryland Code.]]

60   [[(r)]] *Nonresidential* means the use of a building that is not a residential use

61   and includes:

62   (1)   offices, including general, medical, office parks, research parks,

63   townhouse office buildings, government offices, and other similar

64   uses;

65   (2)   industrial <u>uses</u>, including truck terminals, warehouses, light or

66   heavy industrial and manufacturing, industrial parks,

67   [[<u>biotechnology research and development facilities and related</u>

68   <u>office space,</u>]] and other similar uses;

69   (3)   retail <u>uses</u>, including stores or shopping centers engaging in the

70   sale of goods, restaurants, vehicle sales or service, banks or

71   savings and loan institutions, theaters, post offices and other

72   similar uses;

73   (4)   places of worship;

74   (5)   private elementary<u>,</u> [and] secondary<u>, or post-secondary</u> schools;

75   and

76   (6)   other nonresidential <u>uses</u>, including hotels, motels, day care

77   centers, [[hospitals,]] nursing homes, recreational facilities, and

78   other public facilities and similar uses;

79   [(s)   *Per-unit development impact tax* means the development impact tax

80   listed under Section 52-57(b).]

81   [(t)][[(s)]] *Planning policy area* means <u>any of</u> the geographic areas described

82   in the annual growth policy [for which the APFO staging ceiling

83   standards are identified].

84   [(u)][[(t)]]   *Programmed [highways] <u>transportation improvement</u>* means

85   [highway]<u>an</u> improvement [projects that are contained within] <u>listed in</u>

86   the current approved county capital improvements program or the state

87   consolidated transportation program <u>or any similar program adopted by</u>

88   <u>either Gaithersburg or Rockville</u>.

89   [v][[(u)]]   *   *   *

90   [(w)][[(v)]]   *Residential* means the use of a building as a dwelling unit.

91   (1)   *Single-family <u>detached</u> residential* includes[[:

92   (A)]] detached single-family dwelling units<u>.</u>[[; and]]

93   <u>(2)</u>   [[(B)]] *<u>Single-family attached residential</u> includes* townhouses,

94   duplexes and other attached single-family dwelling units.

95   [[(2)]] <u>(3)</u>   *Multifamily residential* includes:

96   (A)   garden apartments;

97   (B)   mid-rise and high-rise [apartments] <u>dwelling unit</u>

98   <u>structures</u>; <u>and</u>

99   [(C)   condominiums other than townhouses; and]

100   [(D)]<u>(C)</u>   mobile homes.

101   [[(3)]] <u>(4)</u>   *Multifamily-senior residential* means<u>:</u>

102   <u>(A)</u>   multifamily housing and related facilities for elderly or

103   handicapped persons, as defined in Section 59-A-2.1, with

104   occupancy restricted as provided in Section 59-G-2.35(b)<u>;</u>

105   [[<u>and</u>]]

106   (B)   multifamily housing units located in the age-restricted

107   section of a planned retirement community, as defined in

108   Section 59-C-7.441; and

109   (C)   a domiciliary care home, as defined in Section 59-A-2.1

110   and subject to Section 59-G- 2.37, which consists of

111   separate assisted living units.

112 [(x)][[(w)]] [[*   *   *]] *Staging ceiling* means the maximum amount of

113   land development that can be accommodated in a planning policy area

114   consistent with APFO staging ceiling standards given the programmed

115   [[highways]] transportation facilities.

116 [(y) *Traffic Impact* means the relative effect of different land uses on the

117   need for impact highways in an impact district based on relative trip

118   generation, average trip length, and the proportion of new trips, as

119   described more fully in Section 52-57.]

120 [(z) *Unprogrammed highways* means improvement projects not contained

121   within the current approved County CIP or the state consolidated

122   transportation program, and which, if programmed, would increase the

123   transportation system capacity and therefore the staging ceiling in an

124   impact tax district.]

125 **52-48.   Findings; purpose and intent.**

126 (a) The master plan of highways indicates that certain roads are needed in

127   planning policy areas. Furthermore, the [comprehensive planning

128   policies report] Annual Growth Policy indicates that the amount and

129   rate of growth projected in certain planning policy areas will place

130   significant demands on the County for provision of major highways

131   necessary to support and accommodate that growth.

132   (b)   Montgomery County, through its adoption of the Capital Improvements

133   Program, indicates its commitment to provide transportation

134   infrastructure.

135   (c)   Montgomery County has determined that a combination of approaches

136   will be necessary to fully achieve the level of [highway] impact

137   transportation improvements needed to accommodate growth in the

138   [impact tax districts] County. Thus, Montgomery County proposes to

139   fund [certain master planned highways up to 50 percent] a program of

140   transportation improvements through development impact taxes to

141   allow new growth in [impact tax districts] the County.

142   (d)   Imposing a development impact tax that requires new development [in

143   certain impact tax districts] to pay [their] its pro rata share of the costs

144   of impact [highway] transportation improvements necessitated by [such

145   new] that development in conjunction with other public funds is a

146   reasonable method of raising the funds to build [such] improvements in

147   a timely manner.

148   (e)   The development impact tax will fund, in part, the improvements

149   necessary to increase the transportation system capacity [[in the impact

150   tax districts]], thereby allowing development to proceed. Development

151   impact taxes will be used exclusively for impact [highways]

152   transportation improvements.

153   [(f)   In order to assure that the development impact taxes reflect the

154   reasonable pro rata share of the costs of the additional highway

155   improvements associated with each new development, the development

156   impact tax is based on relative trip impact associated with the number

157   and type of dwelling units and square footage and type of nonresidential

158   development.]

159   [(g)](f) In order to assure that the necessary [highway] impact transportation

160   improvements are constructed in a timely manner, the County intends to

161   assure the availability of funds sufficient to construct the impact

162   [highway] transportation improvements.

163   [(h)](g) The County retains the power to determine the impact [highway]

164   transportation improvements to be funded by development impact taxes;

165   to estimate the cost of such improvements; to establish the proper

166   timing of construction of the improvements so as to meet APFO staging

167   ceiling standards where they apply; to determine when changes, if any,

168   may be necessary in the County CIP; and to do all things necessary and

169   proper to effectuate the purpose and intent of this Article.

170   [(i)](h) [It is the intent of the] The County intends to further the public purpose

171   of ensuring that an adequate transportation system is available in

172   support of new development [[in the impact tax districts]]. [It is not the

173   intent of this Article to collect a development impact tax from new

174   development in the impact tax districts in excess of that development's

175   pro rata share of the costs associated with the impact highway

176   improvements, as measured by the development's contribution to traffic

177   impact in the tax district.]

178   [(j)](i)   * * *

179   [(k)](j) [It is the intent of the] The County intends to impose development

180   impact taxes [[in an impact tax district]] until [[that area]] the County

181   has attained build-out as defined by the [[applicable master plan]]

182   General Plan.

183   **52-49.   Imposition and applicability of development impact taxes.**

184   (a)   A development impact tax [for impact highways] must be imposed

185   before a building permit is issued for development in [each impact tax

186   district] the County.

187   (b)   An applicant for a building permit for development in an impact tax

188   district must pay a development impact tax in the amount and manner

189   provided in this Article, unless a credit in the full amount of the

190   applicable tax [is determined to be applicable] applies under Section 52-

191   55 or an appeal bond is posted under Section 52-56.

192   (c)   The following impact tax districts are established, consisting of the

193   following Planning Policy Areas as described in the Annual Growth

194   Policy:

195   (1)   Germantown: Germantown East, Germantown Town Center, and

196   Germantown West;

197   (2)   Eastern Montgomery County: Fairland/White Oak and Cloverly;

198   (3)   Clarksburg: Clarksburg[.];

199   (4)   The County District: all planning policy areas and municipalities

200   not located in the Germantown, Eastern Montgomery County, or

201   Clarksburg impact tax districts.

202   [(d)   The boundaries for impact tax districts and the need to create additional

203   impact tax districts must be reviewed biennially using the methodology

204   under Section 52-59. The County Council must hold a public hearing

205   before changing the boundaries for an impact tax district or creating a

206   new impact tax district.]

207   [(e)] (d) Development impact taxes must be accounted for and segregated by

208   the impact tax district from which the taxes are received. The taxes must

209   be restricted in their use to funding improvements listed in [the impact

210   tax district transportation program for the district] Section 52-58.

211   (e)   Development impact taxes collected from developments located in the

212   cities of Gaithersburg and Rockville must be accounted for separately

213   according to the municipality where the funds originated. These tax

214   revenues must be used only to fund transportation improvements listed

215   in a memorandum of understanding between the County and the

216   respective City, which must be approved by the County Council. If the

217   County and the respective City do not agree on a memorandum of

218   understanding regarding the use of impact tax revenues, the County

219   Council may appropriate funds to improvements which are consistent

220   with the master plan of the respective City after holding a separate

221   hearing on any specific improvement if the City so requests.

222   (f)   A development impact tax must not be imposed on **[[the Montgomery

223   County Government, Montgomery College, the Montgomery County

224   Public School System, the Housing Opportunities Commission of

225   Montgomery County, or the Maryland-National Capital Park and

226   Planning Commission, or on]]** any building owned, and used primarily,

227   by any agency or instrumentality of federal, state, County, or municipal

228   government.

229   (g)   A development impact tax must not be imposed on:

230   (1)   any Moderately Priced Dwelling Unit built under Chapter 25A or

231   any similar program enacted by either Gaithersburg or Rockville,

232   (2)   any Productivity Housing [Unit] [[Project]] unit, as defined in

233   Section 25B-17[(m)](j), [and] which meets the price or rent

234   eligibility standards for a moderately priced dwelling unit under

235   Chapter 25A;

236   (3)   [[any development in which at least 20% of the dwelling units:

237   (A)   are multifamily senior-residential, having occupancy

238		restricted to households who are elderly, disabled, or
239		handicapped, and
240	(B)	for which the price or rent charged for the unit makes the
241		unit affordable to households earning less than 60% of
242		the area median income, adjusted for family size,]]

243 [[(4)]] any other [dwelling unit] development in which at least 20% of

244 the dwelling units are built under a government regulation or

245 binding agreement that limits for at least 15 years the price or

246 rent charged for the unit in order to make the unit affordable to

247 households earning less than [50%] [[60%]] 50% of the area

248 median income, or 40% of the units are built under a similar

249 regulation or agreement that makes them affordable to

250 households earning less than 60% of the area median income,

251 adjusted for family size[.];

252 [[(5)]] (4) any Personal Living Quarters [[facility]] unit built under

253 Sec. 59-A-6.15, which meets the price or rent eligibility

254 standards for a moderately priced dwelling unit under Chapter

255 25A;

256 [[(6) any Accessory Apartment unit built under Section 59-G-2.00,]]

257 [[(7)]] (5) any dwelling unit in an Opportunity Housing Project built

258 under Sections 56-28 through 56-32, which meets the price or

259 rent eligibility standards for a moderately priced dwelling unit

260 under Chapter 25A;

261 [[(8)]] [[(7) any biological research and development or

262 manufacturing facility that substantially involves research,

263 development or manufacturing of:

264 (A) biologically active molecules,

265   (B)   devices that employ or affect biological processes, [[or]]

266   (C)   devices and software for production or management of

267   specific biological information, or

268   (D)   products or materials that purify or handle biologically

269   active products;]]

270   [[(9)   any optional method development for which a project plan

271   approval, or equivalent approval in Gaithersburg or Rockville,

272   has been issued prior to the effective date of this act and for

273   which a building permit is issued within 2 years of the effective

274   date of this act,]]

275   [[(10) any standard method development for which subdivision

276   approval, or equivalent approval in Gaithersburg or Rockville,

277   has been issued prior to the effective date of this act and for

278   which a building permit is issued within 2 years of the effective

279   date of this act,]] and

280   [[(11)]] (6) any development located in an enterprise zone designated

281   by the State [[of Maryland]].

282   (h)   The development impact tax does not apply to:

283   (1)   any reconstruction or alteration of an existing building or part of

284   a building that does not increase the gross floor area of the

285   building; and

286   (2)   any building that replaces an existing building on the same site to

287   the extent of the gross floor area of the previous building, if

288   construction begins within one year after demolition or

289   destruction of the previous building was substantially completed.

290   However, if in either case the development impact tax due on the new,

291   reconstructed, or altered building is greater than the tax that would have

292   been due on the previous building if it were taxed at the same time, the

293   applicant must pay the difference between those amounts.

294   **52-50.   Collection of development impact taxes.**

295   (a)   The Department of Permitting Services must determine the amount of

296   the applicable development impact tax.

297   (b)   Applicants for building permits for development [in an impact tax

298   district] that is not exempt from the development impact tax must

299   supply to the Department of Permitting Services for each requested

300   building permit:

301   (1)   The number and type of dwelling units for residential

302   development; and

303   (2)   The gross floor area and type of development for nonresidential

304   development.

305   The applicant must submit for inspection relevant support

306   documentation as the Department requires.

307   (c)   The Department of Permitting Services must not issue a building permit

308   for development [in an impact tax district] that is not exempt from the

309   development impact tax unless:

310   (1)   the applicant has paid the applicable development impact tax;

311   (2)   the applicant is entitled to a credit under Section 52-55 in the

312   amount of the applicable development impact tax; or

313   (3)   an appeal has been taken and a bond or other surety posted under

314   Section 52-56.

315   (d)   When a person applies to a municipality in the County for a building

316   permit for a building or dwelling unit, the applicant must show that all

317   payments due under this Section with respect to the building or unit

318   have been paid. The Director of Finance must promptly refund any

319   payment made for any building or part of a building for which a

320   building permit is not issued by the municipality.

321 [(d)](e) Nothing in this Article changes or supercedes any other requirement of

322   City, County, state or federal law that may apply to the development,

323   including County zoning and subdivision regulations that may impose

324   on-site and off-site transportation improvement requirements and local

325   area review requirements implemented by the [[Maryland-National

326   Capital Park and]] Planning Board [[Commission]].

327 [(e)](f)   * * *

328 [(f)](g)   * * *

329 [(g)](h)   * * *

330 [(h)](i)   * * *

331 [(i)](j)   * * *

332 [(j)](k)   * * *

333 **52-51.   Calculation of development impact tax.**

334   (a)   The Department of Permitting Services must calculate the amount of the

335   applicable development impact tax due for each building permit by:

336   (1)   determining the applicable impact tax district and whether the

337   permit is for development that is exempt from the tax under

338   Section 52-49(f);

339   (2)   verifying the number and type of dwelling units and the gross

340   floor area and type of nonresidential development for which

341   each building permit is sought;

342   (3)   determining the applicable [[per-unit development impact]] tax

343   under Section 52-57; and

344   (4)   multiplying the applicable [[per-unit development impact]] tax

345   by:

346   (A)   the appropriate number of dwelling units; and

347   (B)   the gross floor area of nonresidential development [divided

348   by 1000].

349   (b)   If the development for which a building permit is sought contains a mix

350   of uses, the Department [[of Permitting Services]] must separately

351   calculate the development impact tax due for each type of development.

352   (c)   If the type of proposed development cannot be categorized under

353   [[Sections]] <u>the definitions of *nonresidential* and *residential* in Section</u>

354   52-47 [[(r) and [(w)] <u>(v)</u>]], the Department [[of Permitting Services]]

355   must use the rate assigned to the type of development which generates

356   the most similar traffic impact characteristics.

357   (d)   The Department [[of Permitting Services]] must calculate the amount of

358   the development impact tax due under this Article in effect when the

359   building permit application is submitted <u>to the Department, or before a</u>

360   <u>building permit is issued by a municipality</u>.

361   (e)   A building permit application<u>, or if the property is located in a</u>

362   <u>municipality with authority to issue building permits, a request to</u>

363   <u>determine the amount of the impact tax,</u> must be resubmitted to the

364   Department [[of Permitting Services]] if the applicant changes the

365   project by:

366   (1)   increasing the number of dwelling units;

367   (2)   increasing the gross floor area of nonresidential development; or

368   (3)   changing the type of development so that the development impact

369   tax would be increased.

370   The Department must recalculate the development impact tax based on

371   the plans contained in the resubmitted building permit application.

372 **52-52.   [Biennial recalculation of development impact tax.] [[Reserved]]**

373 **Annual report.**

374   The County Executive must submit a report to the Council on the development

375 impact tax not later than April 1 of each year. The report must include:

376   (a)   a summary of the revenue collected from the tax in the previous

377   calendar year in each impact tax district;

378   (b)   a list of each building exempted from the tax during the previous

379   calendar year under Section 52-49(g) or taxed at a rate of $0 under

380   Section 52-57, and the tax that otherwise would have been paid for that

381   building; and

382   (c)   any other information that the Executive finds relevant.

383   [(a)   Before July 1, 1988, and at least every 2 years thereafter, the County

384   Executive must prepare a report to the County Council on development

385   impact taxes. The report must contain recommendations on:

386   (1)   the methodology for establishing and the data in support of the

387   per-unit development impact taxes;

388   (2)   the impact tax district transportation program; and

389   (3)   the alteration or addition of impact tax districts.

390   (b)   After receipt of the report prepared by the County Executive, the per-

391   unit development impact tax imposed for each impact tax district, must

392   be reviewed, recalculated if necessary, and, after a public hearing,

393   readopted by the County Council. Until the County Council takes

394   action, the development impact taxes remain in effect. The County

395   Council may amend the tax schedule at any time if a master plan

396   revision is adopted that significantly alters the development buildout or

397   transportation program in an impact tax district.

398   (c)   In the impact tax recalculation process, the County Council must

399   consider the following factors:

400   (1)   inflation as measured by changes in a construction cost index

401   used by the Department of Public Works and Transportation;

402   (2)   changes in the design, engineering, location, right-of-way, or

403   other elements of the highways listed in the impact tax district

404   transportation program;

405   (3)   a revision to the master plan for an impact tax district;

406   (4)   changes in the anticipated land uses projected for an impact tax

407   district; and

408   (5)   changes in the methodology and the data by which the per-unit

409   development impact tax is calculated.]

410   **52-53.**   **Restrictions on use and accounting of development impact tax**

411   **funds.**

412   (a)   The funds collected by [[reason of establishment of]] the development

413   impact tax must be used solely for the purpose of funding the impact tax

414   district transportation program in the impact tax district from which the

415   development impact tax was collected and, in the County district, to

416   fund County or municipal transportation improvements of the types

417   listed in Section 52-58 located anywhere in the County. In any fiscal

418   year, development impact tax funds may be spent only to the extent that

419   the annual average amount of funds from other County or city sources

420   spent for transportation improvements listed in Section 52-58 during the

421   3 previous fiscal years exceeds $12 million.

422   (b)   Upon receipt of development impact taxes, the Department of

423   Permitting Services must transfer the taxes to the Department of

424   Finance for crediting to the appropriate account

425   (c)   The Department of Finance must establish separate accounts for each

426   impact tax district, the City of Gaithersburg, and the City of Rockville,

427   and must maintain records for each account so that development impact

428   tax funds collected can be segregated by [the impact tax district of

429   origin] each of these areas. [The following accounts must be initially

430   established:

431   (1)   Germantown;

432   (2)   Eastern Montgomery County.]

433   (d)   The Department of Finance must maintain and keep adequate financial

434   records for each account that must:

435   (1)   Show the source and disbursement of all revenues;

436   (2)   Account for all monies received; and

437   (3)   Ensure that the disbursement of funds from each account is used

438   exclusively for the financing of the transportation improvements

439   listed in [[the applicable impact tax district transportation

440   program]] Section 52-58.

441   *   *   *

442   (g)   Development impact taxes must be disbursed from an account only for

443   the purposes for which the [[development impact]] tax has been

444   imposed, including reimbursement to the County or Gaithersburg or

445   Rockville of advances made for these purposes from other available

446   funds.

447   (h)   Development impact tax funds collected from a project in a Metro

448   Station Policy Area, as defined by the Annual Growth Policy, under the

449   Alternative Review Procedure for Metro Station Policy Areas, must be

450   used for impact transportation improvements located in the same Metro

451   Station Policy Area, or in an adjacent Planning Policy Area.

452 **52-54.** **Refunds.**

453   (a)   Any person who has paid a development impact tax may apply for a

454   refund of the tax if:

455   (1)   The county has [failed to provide impact highways in the

456   applicable impact tax district in accordance with the applicable

457   current impact tax district transportation program] not

458   appropriated the funds for impact transportation improvements of

459   the types listed in Section 52-58, or otherwise formally

460   designated a specific improvement of a type listed in Section 52-

461   58 to receive funds, by the end of the sixth fiscal year after the tax

462   is collected;

463   (2)   The building permit has been revoked or has lapsed because of

464   noncommencement of construction;

465   (3)   The project has been physically altered, resulting in a decrease in

466   the amount of the development impact tax due; or

467   (4)   A declaration encumbering the property for which the

468   development impact tax has been paid has been recorded in the

469   County land records as required under Section 14-17(c) and the

470   applicant is entitled to a credit under Section 52-55(d).

471   *   *   *

472   (d)   The Director of Permitting Services must investigate each claim and

473   hold a hearing at the request of the petitioner. Within 3 months after

474   receiving a petition for refund, the Director of Permitting Services must

475   provide the petitioner, in writing, with a decision on the refund request.

476   The decision must include the reasons for the decisions, including, as

477   appropriate, a determination of whether impact [highways have been

478   provided in the applicable impact tax district transportation program]

479   tax funds collected from the petitioner, calculated on a first-in-first-out

480   basis, have been appropriated or otherwise formally designated for

481   impact transportation improvements of the types listed in Section 52-58

482   within six fiscal years. If a refund is due the petitioner, the Director of

483   Permitting Services must notify the Department of Finance [and request

484   that a refund payment be made to the petitioner] and, if the property is

485   located in Gaithersburg or Rockville, the finance director of that city.

486   (e) The Department of Finance must not pay a refund unless the petitioner

487   has paid all other state, county, or municipal taxes, fees, or charges that

488   the Department is responsible for collecting.

489   (f) The petitioner may appeal the determination of the Director of

490   Permitting Services in accordance with Article 24, Title 9, of the

491   Maryland Code or any successor law.

492 **52-55.   Credits.**

493   (a) A property owner is entitled to a credit if the owner, before [July 29,

494   1986] [[(effective date of act)]] July 1, 2002, entered into a participation

495   agreement, or a similar agreement with the state or a municipality, the

496   purpose of which was to provide additional [staging ceiling]

497   transportation capacity [in an impact tax district]. A property owner is

498   also entitled to a credit if the owner receives approval before [[(effective

499   date of act)]] July 1, 2002, of a subdivision plan, development plan, or

500   similar [[instrument]] development approval by the County or a

501   municipality that requires the owner to build or contribute to a

502   transportation improvement that provides additional transportation

503   capacity. The Department of Public Works and Transportation must

504   calculate the credit. The credit must equal the amount of any charge

505   paid under the participation agreement. The Department may give

506   credit only for building permit applications for development on the site

507   covered by the participation agreement. The Department must not give a

508   refund for a credit earned under this subsection.

509   (b)   A property owner [may construct] <u>must receive a credit for constructing</u>

510   <u>or contributing to</u> an improvement <u>of the type</u> listed in [the impact tax

511   district transportation program] <u>Section 52-58 if the improvement</u>

512   <u>reduces traffic demand or</u> provides additional transportation capacity.

513   [Construction of the improvement, however, must be in addition to all

514   other on-site transportation improvements required by the County or the

515   Planning Board as a condition of subdivision, site plan, or other

516   development approval.]

517   (1)   If the property owner elects to make the improvement, the owner

518   must enter into an agreement with <u>a municipality or</u> the County<u>,</u>

519   <u>or receive a development approval based on making the</u>

520   <u>improvement,</u> before any building permit is issued. The

521   agreement <u>or development approval</u> must contain:

522   (A)   the estimated cost of the improvement, <u>if known then,</u>

523   (B)   the dates <u>or triggering actions</u> [for initiating and

524   completing] <u>to start and<u>,</u> if known then,</u> finish the

525   improvement,

526   (C)   a requirement that the property owner complete the

527   improvement according to <u>applicable municipal or</u> County

528   standards, and

529   (D)   such other terms and conditions as the <u>municipality or</u>

530   County finds necessary.

531   (2)   The [Director of the] Department of Public Works and

532   Transportation must:

533		(A)	review the improvement plan,
534		(B)	verify costs and time schedules,
535		(C)	determine whether the improvement is an impact
536			[highway] transportation improvement,
537		(D)	determine the amount of the credit for the improvement
538			that will apply to the development impact tax, and
539		(E)	certify the amount of the credit to the Department of
540			Permitting Services before that Department or a
541			municipality issues any building permit.
542	(3)		An applicant for subdivision, site plan, or other development
543			approval from the County, Gaithersburg, or Rockville, or the
544			owner of property subject to an approved subdivision plan,
545			development plan, or similar [[instrument]] development
546			approval, may seek a declaration of allowable credits from the
547			Department of Public Works and Transportation. The
548			Department must decide, within 30 days after receiving all
549			necessary materials from the applicant, whether any
550			transportation improvement which the applicant has
551			constructed, contributed to, or intends to construct or contribute
552			to, will receive a credit under this subsection. If during the
553			initial 30-day period after receiving all necessary materials, the
554			Department notifies the applicant that it needs more time to
555			review the proposed improvement, the Department may defer
556			its decision an additional 15 days. If the Department indicates
557			under this paragraph that a specific improvement is eligible to
558			receive a credit, the Department must allow a credit for that
559			improvement when taking action under paragraph 2.

560   [(3)](4) The County must not provide a refund for a credit which is

561   greater than the applicable [[development impact]] tax. If,

562   however, the amount of the credit exceeds the amount of the

563   [[development impact]] tax due, the property owner may apply

564   the excess credit toward the development impact taxes imposed

565   on other building permits for development [[in the same

566   [impact tax district] or an adjacent planning policy area and]]

567   with the same ownership. In this Section, a property has the

568   same ownership as another property if the same legal entity

569   owns at least 30% of the equity in both properties.

570   * * *

571 (e) Any property owner who, before May 1, 2001, built all or part of a

572   project in the Clarksburg [impact tax district] planning policy area

573   which is listed in the impact tax transportation program (including

574   building any road which would be widened under the program) is

575   entitled to a credit equal to the reasonable cost of the improvement. The

576   Department of Public Works and Transportation must calculate the

577   credit. The Department must not give a refund for a credit earned under

578   this subsection.

579 (f) A property owner may transfer a credit against the development impact

580   tax to another property owner [[in the [impact tax district] planning

581   policy area where the credit originated or an adjacent planning policy

582   area]] if the transferor received the credit on or before August 7, 1992 in

583   exchange for the sale of land to the County. The transferee is entitled to

584   the amount of the credit transferred to it, up to the amount of unpaid tax

585   the transferee owes. The Department must not give a refund for a credit

586   used under this subsection. The Department must not allow more than

587            $2,750,000 in credits under this subsection.

588   (g)   Any credits for building or contributing to an impact transportation

589   improvement do not apply to any development that is approved under

590   the Alternative Review Procedure for Metro Station Policy Areas.

591   [[*   *   *]]

592 **52-56.   Appeals.**

593   After determination of the amount of the development impact tax or credit due,

594 an applicant for a building permit or a property owner may appeal to the Maryland

595 Tax Court to the extent permitted by state law or, if the Maryland Tax Court does not

596 have jurisdiction, to the Circuit Court under the Maryland Rules of Procedure that

597 regulate administrative appeals. If the appealing party posts a bond or other

598 sufficient surety satisfactory to the County Attorney in an amount equal to the

599 applicable development impact tax as calculated by the Department of Permitting

600 Services, the Department or municipality must issue the building permit if all other

601 applicable conditions have been satisfied. The filing of an appeal does not stay the

602 collection of the development impact tax until a bond or other surety satisfactory to

603 the County Attorney has been filed with the Department of Permitting Services.

604 **52-57.   Development impact taxes[; methodology].**

605   [(a)   Development impact taxes must be calculated by the following process:

606   (1)   Calculate the difference between the amount of residential (in

607   dwelling units) and nonresidential development (in 1,000 sq. ft.

608   gross floor area increments) possible in each impact tax district

609   based on existing or proposed zoning and existing development

610   (including unbuilt development for which building permits have

611   been secured). These figures establish the full range of

612   development to which an impact tax will be applied as well as the

613		full amount of development that will need to be accommodated
614		by the additional impact highways to be funded, in part, through
615		the impact tax.
616	(2)	Determine the full range of highway improvements needed to
617		accommodate the projected development through buildout, and
618		establish the estimated costs of the improvements. These are the
619		impact highway improvements included in the impact tax district
620		transportation program under Section 52-58.
621	(3)	Establish relative trip impacts for various land use categories in
622		order to assure that each land use is subject to a reasonable pro
623		rata charge based upon its relative impact on the impact highways
624		system in the impact tax district. The relative impacts are
625		measured by the calculation of a trip impact value which is a
626		function of trip generation rates as modified by trip length
627		characteristics and percent of new trips generated by a particular
628		use.
629	(4)	Multiply the number of units of projected new development for
630		the major land use categories (residential and nonresidential) by
631		the trip impact value for that category to establish the percent of
632		impact highway improvement costs to be assigned to residential
633		versus nonresidential development.
634	(5)	Multiply the percent by the total costs to be borne by impact
635		taxes to establish a total cost burden for residential versus
636		nonresidential development; in the same way, divide the costs for
637		residential and nonresidential among the specific land use
638		categories.

639   (6)   Divide the pro rata costs to be borne by each land use category by

640   the per-unit traffic impact value of that land use category to arrive

641   at a pro rata cost per unit for each land use category.

642   (7)   Multiply 50% by the pro rata cost per unit for each land use

643   category (calculated in Step 6) to determine the development

644   impact tax for each land use category.]

645   [(b)](a) The development impact tax rates for each impact tax district are:

Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA)				
Land Use Type	**Germantown**	**Eastern Montgomery County**	**Clarksburg**	**County District**
Single-family detached residential (per dwelling unit)	$2,492	$1,727	$2,753	$2,100
Single-family attached residential (per dwelling unit)	$2,492	$1,727	$2,753	$2,100
Multifamily residential (per dwelling unit)	$1,794	$1,243	$1,981	$1,100
Multifamily-senior residential (per	$531	$368	$573	$325

dwelling unit)				
Office (per sq. ft. GFA)	$2	$2	$2	$1.50
Industrial (per sq. ft. GFA)	$1	$1	$1	$1[[.00]]
Bioscience facilities (per sq. ft. GFA)	$0	$0	$0	$0
Retail (per sq. ft. GFA)	$5.08	$3.52	$5.61	$1.50
Places of worship (per sq. ft. GFA)	$0.29	$0.20	$0.32	$0.20
Private elementary and secondary schools (per sq. ft. GFA)	$0.48	$0.33	$0.53	$0.30
Hospitals (per sq. ft. GFA)	$0	$0	$0	$0
Other nonresidential (per sq. ft. GFA)	$5.62	$3.89	$6.20	$1[[.00]]

646   [[(b)   Each taxpayer in the County District must pay the development impact

647   tax at 25% of the rates set in this Section for building permit

648 applications filed before June 30, 2003; 50% of the rates set in this

649 Section for building permit applications filed between July 1, 2003 and

650 June 30, 2004; 75% of the rates set in this Section for building permit

651 applications filed between July 1, 2004 and December 31, 2004; and

652 100 % of the rates set in this Section for building permit applications

653 filed on or after January 1, 2005. To the extent that a taxpayer pays a

654 lower rate because of this subsection than the rate set in subsection (a),

655 any credit claimed under Section 52-55 must be reduced by the same

656 ratio.]]

657 [[(c)]] (b) Except as provided in subsection [[(d)]] (c), any development

658 located in a Metro Station Policy Area, as defined in the Annual Growth

659 Policy, must pay the tax at 50% of the tax calculated in [[subsections]]

660 subsection (a) [[and (b) of this Section]].

661 [[(d)]] (c) Any development located in a Metro Station Policy Area that

662 receives approval of a preliminary plan of subdivision under the

663 Alternative Review Procedure for Metro Station Policy Areas must pay

664 the tax [[calculated in subsections]] at the rate listed in subsection (a)

665 [[and (b) of this Section]].

666 [[(e)]] (d) The County Council by resolution, after a public hearing advertised

667 at least 15 days in advance, may increase or decrease the rates set in this

668 Section.

669 [[(f)]] (e) The Director of Finance must adjust the tax rates set in or under this

670 Section on July 1 of each odd-numbered year by the annual average

671 increase or decrease in the Consumer Price Index for all urban

672 consumers in the Washington-Baltimore metropolitan area, or any

673 successor index, for the two most recent calendar years. The Director

674 must calculate the adjustment to the nearest multiple of 5 cents for rates

675   per square foot of gross floor area, or one dollar for rates per dwelling

676   unit. The Director must publish the amount of this adjustment not later

677   than May 1 of each odd numbered year.

678   **52-58.   Impact tax district transportation program.**

679   The impact tax district transportation program is as follows:

680   *   *   *

681   (d) [Projects to] In the County district, projects that may be funded with impact

682   taxes [include] are any [improvements to master-planned major arterial

683   roadways, other planned arterials needed for access within impact tax

684   districts, and park-and-ride facilities.]:

685   (1)   new road or widening of an existing road that adds highway or

686   intersection capacity or improves transit service or bicycle

687   commuting, such as bus lanes or bike lanes;

688   (2)   new or expanded transit center or park-and-ride lot, [[or]]

689   (3)   bus added to the Ride-On bus fleet, but not a replacement bus;

690   (4)   new bus shelter, but not a replacement bus shelter;

691   (5)   hiker-biker trail used primarily for transportation;

692   (6)   bicycle locker that holds at least 8 bicycles;

693   (7)   sidewalk connector to a major activity center or along an arterial

694   or major highway; or

695   (8)   in a Metro Station Policy Area or an adjacent policy area, the

696   operating expenses of any transit or trip reduction program.

697   (e)   No more than 10% of the funds collected from this tax in the County

698   District, other than funds collected in a Metro Station Policy Area, may

699   be spent for the items listed in paragraphs (4)-(8) of subsection (d).

700   **[52-59.   Methodology to determine impact tax districts.]**

701   **[**(a)   Impact tax districts are those planning policy areas, or combinations of

702   planning policy area, in which existing and approved development is at

703   or above the staging ceiling as defined by the Annual Growth Policy.

704   Where existing development is at or above the staging ceiling, no

705   further development can occur in the planning policy area without

706   violating the adequate public facilities ordinance transportation

707   standards, unless the staging ceiling is raised. The staging ceiling can be

708   raised by the addition of major improvements beyond those that are

709   programmed. The addition of these unprogrammed improvements will

710   raise the staging ceiling, with the objective of allowing additional

711   development consistent with APFO staging ceiling standards. After an

712   impact tax district has been designated under subsection (b), it must

713   remain an impact tax district until full buildout has occurred.

714   (b)   Additional planning policy areas or combinations of planning policy

715   areas may be designated by the County Council as impact tax districts

716   under the procedure in this Article. The County Council must consider

717   the following factors in determining when and whether to add impact

718   tax districts:

719   (1)   The Annual Growth Policy;

720   (2)   The standards incorporated in the APFO;

721   (3)   The projected buildout and timing of the projected buildout of

722   planning policy areas;

723   (4)   The staging ceiling in planning policy areas;

724   (5)   The need for and cost of unprogrammed highways necessary to

725   raise the staging ceiling or provide necessary improvements in

726   support of projected development; and

727   (6)   Any other factor the County council finds relevant.

728   The principal reason for identifying a planning policy area or

729   combination of planning policy areas as an impact tax district is to

730   prevent the moratorium on development that would otherwise occur by

731   application of APFO staging ceiling standards in a planning policy area

732   where existing development is at or above the staging ceiling.]

733   **Sec. 2. Effective Dates; Transition.**

734   (a)   This Act takes effect on July 1, 2002, and applies to any development

735   for which an application for a building permit is filed on or after that

736   date.

737   (b)   Each taxpayer in the County District must pay the development impact

738   tax at 25% of the rates set in Section 52-57, as amended by Section 1 of

739   this Act, for building permit applications filed between July 1, 2002 and

740   December 31, 2002; 50% of the rates set in Section 52-57 for building

741   permit applications filed between January 1, 2003, and June 30, 2003;

742   75% of the rates set in Section 52-57 for building permit applications

743   filed between July 1, 2003 and December 31, 2003; and 100% of the

744   rates set in Section 52-57 for building permit applications filed on or

745   after January 1, 2004. To the extent that any taxpayer pays a lower rate

746   than that set in Section 52-57 because this subsection applies, any credit

747   claimed under Section 52-55 must be reduced by the same ratio.

748   (c)   In the County District, the development impact tax does not apply to

749   any building if:

750   (1)   a subdivision plan, project plan, or an equivalent development

751   approval mechanism in Gaithersburg or Rockville, which

752   includes that building was approved before July 1, 2002, and

753   (2)   a building permit is issued before July 1, 2003.

754   *Approved:*

755   /S/   March 14, 2002

        Steven A. Silverman, President, County Council   Date

756   *Approved:*

757   /S/   March 21, 2002

        Douglas M. Duncan, County Executive   Date

758   *This is a correct copy of Council action.*

759   /S/   March 25, 2002

        Mary A. Edgar, CMC, Clerk of the Council   Date